

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civ. A. No. 05-CV-1004 (ESH)
)	
FEDERAL BUREAU OF INVESTIGATION,)	
<u>et al.</u> ,)	
)	
Defendants.)	
)	

SECOND DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C. My background is further described in paragraphs 1-3 of my first declaration filed in this case, dated July 1, 2005 (“First Hardy Declaration”). The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(2) This declaration supplements and hereby incorporates the First Hardy Declaration, which contains information concerning the handling of plaintiffs' requests, an explanation of the FBI's Central Records System (“CRS”), the search methods utilized to locate FBI records responsive to plaintiffs' requests, the records identified to date, and a request for additional time to process the documents. I have reviewed the Declaration of Ben Wizner dated July 18, 2005,

which discusses allegedly "incorrect factual statements" in my previous declaration, and hereby submit this second declaration in order to resolve any remaining factual disputes in conjunction with defendant's reply in support of its motion for partial summary judgment and request for an Open America stay.

(3) In my previous declaration, I explained in detail the FBI's understanding of plaintiffs' December 2, 2004 FOIA request addressed to FBIHQ, and the field offices in New York, Detroit, Boston, Los Angeles, Washington, Richmond and San Francisco, and which sought documents related to the monitoring, surveillance, and investigation of plaintiffs. See Exhibit B of First Hardy Declaration. Footnotes 1 to 4 on the first page of plaintiffs' request appeared to limit their request for documents concerning the American-Arab Anti-Discrimination Committee ("ADC"), Code Pink, United for Peace and Justice ("UFPJ"), and People for the Ethical Treatment of Animals ("PETA") to particular FBI field offices. Each footnote indicates that the FOIA request is addressed to a particular field office "only" as it relates to one of the requesters. For example, footnote 1 states that "[t]his Request is addressed to the Detroit field office only as it relates to Requestor American-Arab Anti-Discrimination Committee."

(4) The FBI attempted to communicate with Mr. Wizner concerning the meaning of these footnotes. See Declaration of Margaret P. Jackson, dated July 27, 2005. The FBI originally understood the requests for these particular organizations to be limited to the particular field office only. Despite the FBI's efforts to communicate with plaintiffs' counsel, it now appears that the FBI misunderstood plaintiffs' December 2, 2004 letter with regard to the scope of the search requested. We believe that this error stemmed from their initial request letter, which, on its face, is confusing. Nevertheless, the FBI has now begun efforts to remedy these

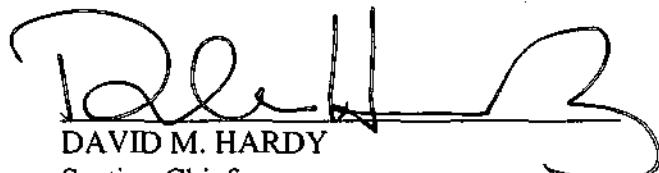
misunderstandings regarding the search issues. See descriptive chart attached hereto as Exhibit

A. As we proceed with our search, we will identify the number of potentially responsive pages involved as a result of the expanded searches, and the overall amount of time required to complete processing of these records -- either more time, less time, or the same time estimates provided in the First Hardy Declaration.

(5) With respect to plaintiffs' other FOIA request for NJTTF records, FOIPA No. 1010249, (see Exhibit A to First Hardy Declaration), until further dialogue has taken place between plaintiffs and the FBI in an attempt to reduce the scope of the request, the FBI is left with little choice but to proceed with a reasonable interpretation of plaintiffs' request, and assign the case to the large queue. Given the extremely broad scope of the request, it is not possible to make a more precise estimate of when processing will be completed. (See footnote16, First Hardy Declaration.) Once the search and scoping process is completed, the FBI anticipates it will be in a better position to estimate how long it will require to process this set of documents in the normal course. The FBI has invited the ACLU to discuss a reduction in the scope of the NJTTF request, see Exhibit M to First Hardy Declaration, and I am advised that the ACLU is willing to discuss the matter.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibit A attached hereto is a true and correct copy.

Executed this 26th day of July, 2005.



DAVID M. HARDY

Section Chief

Record/Information Dissemination Section

Records Management Division

Federal Bureau of Investigation

Washington, D.C.

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EXHIBIT A

SUBJECT	FBI FOIPA NUMBER	FBI SEARCHES CONDUCTED TO DATE & APPROXIMATE NUMBER OF PAGES LOCATED¹	FBI ADDITIONAL SEARCHES TO BE CONDUCTED	NEXT ACTION/RESULTS
ACLU and ACLU Foundation	1010242	FBIHQ, New York, Los Angeles, and Washington Field Office ("WFO") – Approximately 1173 pages <u>had</u> been retrieved and identified as potentially responsive.	None	Review of the pages retrieved to date as well as additional pages retrieved from FBIHQ Divisions (including Office of Public Affairs, and Office of Congressional Affairs) is on-going.
American-Arab Anti-Discrimination Committee ("ADC")	1010243	San Francisco, Detroit – Approximately 64 pages <u>had</u> been retrieved and identified as potentially responsive.	FBIHQ, New York, Los Angeles, WFO	New search has been as of July 26, 2005.
Code Pink	1010244	FBIHQ, New York, Los Angeles, WFO and Boston – no records had been located.	None	This request has been closed and plaintiffs have been notified of the "no records" result by letter dated March 3, 2005.

¹ In the First Hardy Declaration, the chart which listed the field offices which were searched for each subject matter was inadvertently overinclusive in some instances. Specifically, the Portland, Denver, Chicago, and Omaha Field Offices as well as the Des Moines Resident Agency were inadvertently listed as locations which were searched; these offices are involved with respect to searches in response to other December 2, 2004 ACLU requests which are pending but which are not the subject of this litigation.

Greenpeace	1010245	FBIHQ, New York, Los Angeles, WFO – Approximately 2383 pages <u>had been</u> retrieved and identified as potentially responsive.	None	These documents will be scoped and will be placed in the medium queue as soon as scoping is complete.
Muslim Public Affairs Council (“MPAC”)	1010246	FBIHQ, New York, Los Angeles, WFO – Approximately 274 pages <u>had been</u> retrieved and identified as potentially responsive	None	This is a “small queue” case, and the FBI still anticipates that it will make a release of any non-exempt records by September 1, 2005.
People for the Ethical Treatment of Animals (“PETA”)	1010247	Richmond – no records had been located.	FBIHQ, New York, Los Angeles and WFO	New search has commenced and to date has uncovered approximately 400 potentially responsive pages, which will require further review to determine how many are actually responsive.
United for Peace and Justice (“UFPJ”)	1010248	FBIHQ, New York, Los Angeles, WFO, and Boston – 6 pages had been retrieved as potentially responsive and processed	None	The FBI made a release of these six pages, with redactions, by letter dated June 27, 2005. <u>See</u> Exhibit H to First Hardy Declaration.